

REMARKS

The claims amended and presented herein clearly recite features disclosed and described in the FIGS. and specification, for example, on page 6, lines 21-26¹, and in FIG. 1. In light of the following remarks and foregoing amendments, applicants respectfully submit that the above-identified application is in condition for allowance. Reconsideration and withdrawal of the claim rejections and allowance of claims 1-4, 9-15, 17, and 19-21 is hereby respectfully solicited.

I. WITHDRAWN CLAIMS

Claims 5-8 and 16 depend from an allowable generic base claim. Therefore, applicants also solicit reinstatement and allowance of these withdrawn claims.

II. CLAIMS REJECTED UNDER 35 U.S.C. §102(b)

Claims 1, 3, 9, 10 and 12 have been rejected under 35 U.S.C. §102(b) as anticipated by Halvorsen. Applicants respectfully traverse the rejection based on the following grounds.

Independent claim 1 and all claims dependent directly or indirectly thereon recite, *inter alia*, a water collecting tray having a footprint larger than the base of the dish drainer when the water collecting tray is in a deployed configuration. As described in the specification as an exemplary embodiment, the water collecting tray can be configured to direct runoff water from the dish drainer into a sink.

Halvorsen does not teach a *water collecting* tray of any kind, much less one having a foot print larger than the base of the dish drainer. Halvorsen simply discloses a combined dish drainer and colander B including an annular stand A having a plurality of legs *a* and an annular seat *a'*. Because Halvorsen does not suggest or disclose, in any way,

¹ "The tray preferably is inclined so that it can empty into a sink and may have various decorative features (for example ribs) or other structural or aesthetic components. The tray also will typically have some type of rim around its outer periphery to keep water collected by the tray flowing toward the sink rather than spilling onto the counter or floor."

providing a water collecting tray as recited by claims 1, 3, 9, 10 and 12, either expressly or inherently, these claims cannot be anticipated² thereby. Reconsideration and withdrawal of the anticipation rejection is hereby respectfully requested.

If, *arguendo*, the annular stand A disclose by Halvorsen is considered to be a tray as recited by independent claim 1, ignoring for the moment that the annular seat a' is incapable of collecting water, the annular stand A is not positionable entirely within the interior of the dish drainer, as further recited by claim 1. The annular stand A includes a plurality of rigid legs a, as shown in FIG. 3, such that when the annular stand A is resting within the colander B, the plurality of rigid legs a are not positionable entirely within the interior of the dish drainer, but instead extend upward and outward. For these additional reasons, independent claim 1 cannot be anticipated by Halvorsen.

III. CLAIMS REJECTED UNDER 35 U.S.C. §103(A)

Claims 2, 4, 11, 13-15 and 17-19 have been rejected under 35 U.S.C. §103(a) as obvious in light of Halvorsen in view of either Todd or Kaufman et al. Applicants respectfully traverse the rejection based on the following grounds.

Independent claims 1 and 13, and all claims dependent directly or indirectly thereon recite, *inter alia*, a water collecting tray having a footprint larger than the bottom of the dish drainer when the water collecting tray is in a deployed configuration.

² "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 U.S.C. §102 rejection. See MPEP § 2131.01.

No one of the cited references, taken alone or in combination, is sufficient to set forth a *prima facie* case of obviousness³ because they fail to teach or suggest all the claim limitations. As previously discussed in Section I, Halvorsen discloses a combined dish drainer and colander B including an annular stand A having a plurality of legs *a* and an annular seat *a'*. On the other hand, Todd discloses a modular wire rack 155 onto which small fragile items may be secured for shipment, in a package 180, and eventual display. Finally, Kaufman et al. discloses a packaging case having an elevating mechanism, the packaging case including plastic sheeting 52 to form the covers 54 and 56. No one of the cited reference teach or suggest a *water collecting* tray of any kind, much less one having a foot print larger than the base of the dish drainer.

Because Halvorsen, Todd and Kaufman et al. do not, alone or in combination, teach or suggest each and every element recited in independent claims 1 and 13, either expressly or inherently, these claims are not rendered obvious. Reconsideration and withdrawal of the obviousness rejection is hereby respectfully requested.

³ To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.


IV. CONCLUSION

For these foregoing reasons, applicants submit that the application is in condition for allowance. If there are any additional fees or refunds, the Commissioner is hereby directed to charge or debit Deposit Account No. 13-2855. Reconsideration and withdrawal of the rejections is respectfully requested.

Respectfully submitted for,

MARSHALL, GERSTEIN & BORUN

May 13, 2003

By: 
Bryan J. Lempia
Reg. No. 39,746
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6402
(312) 474-6300